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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/721,062	11/22/2000	Charles H. Glover	GC-409	2382

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EXAMINER

BERGIN, JAMES S

ART UNIT PAPER NUMBER

3641

DATE MAILED: 05/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/721,062

**Applicant(s)**

GLOVER ET AL.

**Examiner**

James S. Bergin

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 January 2004.
- 2a) ☐ This action is **FINAL**.      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 39-54,56,57 and 59-63 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 39-54,56,57 and 59-63 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input checked="" type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                        | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 45, 46 and 48 are rejected under 35 U.S.C. 102(e) as being anticipated by Davies. Davies discloses, in figures 8A-8C, a projectile comprising a shell having a gas seal at its rear end, a forward cavity containing a plurality of particles and an actuator 94 at the front end of the cavity in contact with the particles. Davies states that his projectile is lethal over a short distance and then becomes less lethal over distance, note line 61 of col. 2 through line 4 of col. 3. The Davies projectile will substantially perform the claimed method.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 45, 46 and 48 rejected under 35 U.S.C. 102(b) as being anticipated by Canon.

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Canon discloses a projectile comprising a shell 10 containing a plurality of particles and a liquid, and a non-fragmenting tip 20, note line 63 of col. 3 through line 4 of col. 4. The Canon projectile will substantially perform the claimed method.

5. Claims 51 and 52 are rejected under 35 U.S.C. 102(b) as being anticipated by Peterson.

Peterson discloses in figs. 5C and 6C, a projectile comprising a shell 40 containing a plurality of particles 81. Lines 53-65 of col. 6 state that the particles within the shell upon passing through and traveling a distance three feet past the target will disperse into a pattern. The Peterson projectile will substantially perform the claimed method.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 49, 50, 47, 51-54 and 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davies.

It would have been obvious to one having ordinary skill in the art at the time that the invention was made to vary the characteristics of the elements of the Davies projectile to achieve a desired dispersion of the particles.

8. Claims 39-44, and 60-63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davies in view of Peddie.

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Davies is applied as above. However, Davies does not disclose an absorption zone. Peddie teaches that it is old and well known in the art to employ a wad absorption zone in a shotgun projectile to protect the projectile upon firing. To employ an absorption zone in the Davies projectile to protect the projectile during the flight, as taught by Peddie, would have been obvious to one having ordinary skill in the art at the time that the invention was made.

9. Claims 49, 50, 47, 51-54, 56, 57 and 59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Canon. It would have been obvious to one having ordinary skill in the art at the time that the invention was made to vary the characteristics of the elements of the Canon projectile to achieve a desired dispersion of particles.

10. Claims 39-44 and 60-63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Canon in view of either Turco et al. or Knoster, Jr..

Canon is applied as above. However, Canon does not disclose a projectile comprising a gas seal and a wad absorption zone. Both Turco et al. and Knoster, Jr. teach that it is old and well known in the art to employ a gas seal and a wad absorption zone on the rear portion of a projectile to protect the projectile upon firing. To employ a gas seal and a wad absorption zone on the rear portion of the Canon projectile to protect the projectile, as taught by either Turco et al. or Knoster Jr, would have been obvious to one of ordinary skill in the art at the time that the invention was made.

11. Claims 53-55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peterson.

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Peterson is applied as above. It would have been obvious to one having ordinary skill in the art at the time that the invention was made to vary the characteristics of the elements of the Peterson projectile to achieve a desired dispersion of the particles.

12. Applicants' remarks have been carefully considered but are not deemed persuasive. The applicants' have not as yet defined in the claims the nature of the target that is impacted by the projectile of the applicant's method claims under examination. The thickness and hardness of the impacted target will determine how the applicants' projectile will perform and the nature of the dispersal pattern of the particles dispersed therefrom. The projectiles of Davies, Peterson and Canon could perform as in the applicants' method claims, depending on the thickness and hardness of the specific target impacted.

13. Applicants' allege that the rejections based on the Davies patent are improper because the outer shell and payload of the Davies projectile disintegrate upon impact with the particles dispersing quickly in an uncontrolled manner. Davies teaches that his projectile is lethal over a short distance and then becomes less lethal over distance, note line 61 of col. 2 through line 4 of col. 3. Since the projectile disclosed by Davies is substantially identical to applicant's projectile, it is incumbent upon the applicants to show that the Davies projectile will not perform the claimed method, note In re Best, 195 USPQ 430, 433 (CCPA 1977), In re King, 231 USPQ 136 (Fed, Cir. 1986) and MPEP 2112.02.

14. Applicants allege that the rejections based on the Canon reference are improper because the Canon projectile disintegrates immediately upon impact with the target

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body and does not teach passing through a barrier before the target, and having a lethality range for a predetermined distance beyond the initial impact. Since the projectile disclosed by Canon is substantially identical to applicant's projectile, it is incumbent upon the applicants to show that the Canon projectile will not perform the claimed method, note *In re Best*, 195 USPQ 430, 433 (CCPA 1977), *In re King*, 231 USPQ 136 (Fed. Cir. 1986) and MPEP 2112.02.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James S. Bergin whose telephone number is 703 308-8549. The examiner can normally be reached on Monday - Wednesday and Friday, 8.30 - 5.30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 703 306-4198. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
James S. Bergin

  
MICHAEL J. CARONE  
SUPERVISORY PATENT EXAMINER